



January 17, 2001

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 W. Belknap
Fort Worth, Texas 76196-0201

OR2001-0178

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 143261.

The Tarrant County Sheriff's Department (the "department") received a request for information concerning an investigation of alleged sexual harassment. You claim that portions of the requested information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information that is encompassed by the common law right to privacy. See *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App. - El Paso 1992, writ denied), the court applied the common law right to privacy addressed in *Industrial Foundation* to an investigation of allegations of sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. See 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court further held, however, that "the public does not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* In accordance with *Ellen*, this office typically has required the release of a document analogous to the conclusions of the board of inquiry in *Ellen*, but has held that a governmental body must withhold both the identities of victims and witnesses of alleged sexual harassment and any information that would tend to identify such a victim or witness. See Open Records Decision Nos. 393 (1983), 339 (1982).

In this instance, the submitted information includes statements by the victim of the alleged sexual harassment, statements of witnesses, and a summary of the department's investigation. You inform this office that the requestor was the victim of the alleged sexual harassment and that the department has furnished to the requestor her own statements and complaints, along with the affidavit of the accused. Pursuant to section 552.023 of the Government Code, the requestor has a special right of access, beyond that of the general public, to information held by the sheriff's department that pertains to the requestor and that is protected from disclosure to the public by laws intended to protect the requestor's privacy interests. See Gov't Code § 552.023(a). The identity of the individual accused of sexual harassment is not protected from public disclosure, as common law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about the employee's job performance. See Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978). You also inform us that the requestor is generally aware of the identities of the witnesses, but does not know the substance of their statements. You believe that the statements of the witnesses are protected from disclosure under section 552.101. Upon careful review of the submitted information, we believe that the department's investigation summary is analogous to the conclusions of the board of inquiry, the release of which was upheld in *Ellen*. Accordingly, we conclude that the department must release its summary of the investigation to the requestor. In doing so, however, the department must withhold the identities of the witnesses, other than the accused, and information that would tend to identify the witnesses. See *Ellen*, 840 S.W.2d at 525. We have marked the information in the investigation summary that the department must withhold under section 552.101 in conjunction with common law privacy. The rest of the submitted information also is confidential under section 552.101 and must not be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

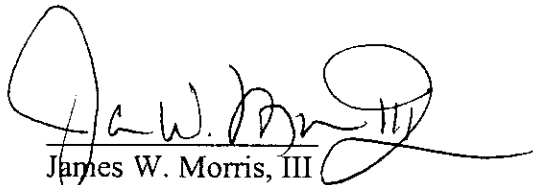
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", written over a horizontal line.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/er

Ref: ID# 143261

Encl: Submitted documents